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Date: Nov 21/2011

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/682,088  
Applicant : Hamid Mahmood, et al  
Filed : October 10, 2003  
TC/A.U. : 2476  
Examiner : Abelson, Ronald B.

Confirmation No. 9198

Docket No. : 77682-519  
Customer No. : 07380

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Commissioner for Patents  
Alexandria, VA 22313-1450  
U.S.A.  
Dear Sir:

**APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. 41.41**

The following is the Appellant's Reply Brief, submitted under the provisions of 37 C.F.R. 41.41 in response to the Examiner's Answer dated September 19, 2011, which was in reply to the Appeal Brief originally submitted June 7, 2011 and the Supplemental Response to the Original Appeal Brief submitted on July 7, 2011.

**Response to Examiner's "Response to Argument" Section of Examiner's Answer**

In the Response to Arguments section of the Examiner's Answer, beginning on page 14, the Examiner indicates that he disagrees with the Appellant's argument on the top of page 14 of the Appeal Brief stating that it is "particularly relevant that Dolganow does not disclose or pertain to a wireless terminal having functionality recited in claim 1". The Examiner alleges that Dolganow teaches source routing and the portion of the limitation of claim 1, starting at, "receiving, via a respective link...". Appellant argues that the claim limitation is directed to the wireless terminal doing the receiving, which is not the case in Dolganow.

The Examiner further indicates on page 15 of the Examiner's Answer that Dolganow discloses an exemplary case in which "the originating parties 10 are only connected to the source node. Therefore, the originating parties do not have a choice where to transmit and must always transmit to the source node". It is not clear to the Appellant what bearing this has on Dolganow disclosing the limitations of claim 1. The link between the originating parties 10 and source node is not likely to be such that they are collocated or the same device, and furthermore neither element is indicated to be a wireless device, so it is unclear why the Examiner would believe the combination of an originating party and source node, in any form, could collectively be equated to a wireless terminal.

The Examiner further indicates on page 15 that Iwata teaches, in source routing, the route being selected from the terminal. Appellant submits that it is unclear the reasoning for combining Iwata with the other cited references when the other references are not directed to the use of wireless terminals and Iwata does not appear to disclose any other limitations of the present claims, as the Examiner has not chosen Iwata for its disclosure of any comparable limitations in the claims. As Iwata is being cited because it allegedly teaches a particularly relevant limitation of the invention, it would seem to make sense to try to use Iwata more prominently in the art related objections than for simply a single limitation, such as a wireless terminal performing the routing decision making, in isolation. As it is not being so used, Appellant again alleges there is not a strong motivation to combine the four references based on their distinct teachings, which do not appear to overlap with one another in their teachings or with the present invention.

The Examiner alleges on pages 15 and 16 of the Examiner's Answer that the Appellant is arguing limitations that are not found in the claims. In particular, the Examiner refers to the Appellant's comments that "Clearly, there is no discussion in McAllister regarding using 'information dependent upon wireless communications between the terminal and a least one of the nodes' (emphasis added), which includes last hop wireless link conditions between the wireless terminal and an access node of the network, in selecting a route for the packet". Appellant had stated that the limitation "information dependent upon wireless communications between the terminal and a least one of the nodes" includes the scope of last hop wireless link conditions between the wireless terminal and an access node of the network, in selecting a route

for the packet, which is a reasonable interpretation of the limitation based on a reading of the description and the differentiation of “network information” and “information dependent upon wireless communications between the terminal and at least one of the nodes”, which are recited as two separate elements in the claims. Furthermore, Appellant submits that the portions of McAllister that the Examiner has selected as disclosing “information dependent upon wireless communications between the terminal and at least one of the nodes” do not disclose such a limitation. In the cited portion of McAllister, which refers to an article authored by E.M Spiegel et al., it is disclosed that “source routing is utilized to effect this path computation which typically is a function of link cost and quality of service requirements” (emphasis added). Appellant submits the use of “requirements” for a system, which would likely be considered minimum predetermined threshold values, are not the same as “information dependent upon wireless communications between the terminal and at least one of the nodes” (emphasis added).

On pages 15 and 16 of the Examiner’s Answer the Examiner alleges that the Appellant does not prove inherency of the claim related to the limitation “information dependent upon wireless communications between the terminal and a least one of the nodes” as including last hop wireless link conditions between the wireless terminal and an access node of the network. Appellant submits that based on at least the indicated portions of the present application, for example page 9, lines 5 to 17, it is clear that “information dependent upon wireless communications between the terminal and a least one of the nodes” can include the last hop wireless link conditions between the wireless terminal and an access node of the network.

The Examiner disagrees with the Appellant’s assertion on page 16 of the Appeal Brief that the selection of Aliksson is based on hindsight selection solely for its disclosure of a wireless terminal. The Examiner states that “The appellant contends that none of the limitations of claim 1 are disclosed in Aliksson. However, the body of claim 1 recites a wireless link and Aliksson teaches source routing in a wireless environment”. Appellant would like to clarify that it was the Examiner that conceded in the Final Office Action of December 6, 2010 and the synopsis of the rejections in the Examiner’s Answer that Aliksson fails to teach the limitations of the body of the claim, instead relying on Dolganow, McAllister and Iwata to teach those limitations, and therefore it is the Examiner who originally conceded that none of the limitations of the body of

claim 1 were disclosed by Alriksson, or at least teaches them sufficiently enough to be relied upon by the Examiner to be disclosed by Alriksson.

On page 18 of the Examiner's Answer the Examiner alleges that "the appellant does not state why the references 'teach away'", in relation to the Appellant's statement on page 18 of the Appeal Brief that states "while at least two of the other references perform source routing of a type that teaches away from Alriksson, or at least a source routing of a type that would cause some of the references to perform in a manner that is other than the manner in which they would otherwise operate". Firstly, Appellant submits that the portion of the Appeal Brief in question states that the references either teach away or would cause the references to operate in a manner that they would not normally operate, meaning that either one of the possibilities could exist. Furthermore, Appellant intended this to refer to the operation of Dolganow and McAllister, which are discussed on pages 13 to 15 of the Appeal Brief, as performing routing decision making in a network node, which is different than performing routing decision making in a wireless terminal as recited in the independent claims of the present application. Therefore, combining a reference that discloses routing decision making in a network node that is not an end user with a reference that discloses routing decision making by an end user in an attempt to show that the claims of the present application are obvious would at least result in a change in operation of the system in the reference that discloses routing decision making in a network node. It may even be considered that a teaching of a network node making the routing decision making teaches away from the end user performing the routing decision making because at the relevant date of the reference that discloses routing decision making in the network node, the inventor clearly decided that the network node and not the end user was the location where routing decisions would be made, thus making a clear distinction between the two possibilities.

On pages 22 and 23 of the Examiner's Answer, the Examiner alleges that Appellant's statement "If it were obvious to one skilled in the art to combine the references, as alleged by the Examiner, then it would seem likely that the McAllister and Dolganow applications would have suggested the possibility of the users and Originating Parties, respectively, performing the source routing, as the applications both having filing dates subsequent to Iwata issue date" is an unsubstantiated allegation. Appellant submits that the statement was made to emphasize that if the concept of

moving the routing decision making from a network node to the end user was a simple and non-inventive concept on the basis of combining the references in the manner suggested by the Examiner, it is unclear why neither of the identified references did not disclose such an embodiment. It is unclear to the Appellant what allegation the Examiner considers to be unsubstantiated. The two references are clearly before the filing date of the present application and subsequent to Iwata, so that is not unsubstantiated. Neither of the references consider the possibility of end user decision making as neither the Examiner nor the Appellant has found such disclosure in the cited references, so that is not unsubstantiated.

If one skilled in the art should be considered to be aware of all the cited references, it seems to be unfair to hold the references cited subsequent to Iwata to a lower standard than one skilled in the art would be when combining the references to arrive at the present claims. If neither of the other two inventors of the cited references, who should be considered to be aware of the Iwata reference themselves, considered using the end user for making routing decisions instead of, or as well as, the network node, then why would one consider those references and Iwata at a later date and suddenly arrive at such a result?

### **Conclusions**

With respect to the issues presented within the Final Office Action dated December 6, 2010, and maintained in the Examiner's Answer dated September 19, 2011, Appellant respectfully submits that errors have been made in the rejection of the appealed claims.

Regarding the issue of whether claims 1 to 8, 11 to 18 and 21 to 29 are unpatentable under 35 U.S.C. 103(a) over Alriksson in view of Dolganow and McAllister and further in view of Iwata, Appellant respectfully requests that the rejection of claims 1 to 8, 11 to 18 and 21 to 29 be reconsidered by the Board of Patent Appeals and Interferences and overturned.

Regarding the issue of whether claims 9 and 19 are unpatentable under 35 U.S.C. 103(a) over Alriksson in view of Dolganow, McAllister and Iwata and further in view of Miernik, Appellant respectfully requests that the rejection of claims 9 and 19 be reconsidered by the Board of Patent Appeals and Interferences and overturned.

Regarding the issue of whether claims 10 and 20 are unpatentable under 35 U.S.C. 103(a) over Alriksson in view of Dolganow, McAllister and Iwata and further in view of Seguin, Appellant respectfully requests that the rejection of claims 10 and 20 be reconsidered by the Board of Patent Appeals and Interferences and overturned.

Respectfully submitted,

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By 

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